IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.23734 of 2005

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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GOPALBHAI VIBHABHAI PRAJAPATI - Petitioner(s)
Versus
PRAKASHBHAI CHAMPAKLAL SHAH & 1 - Respondent(s)

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Appearance :
MR RAJESH K SHAH for Petitioner(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 2.
MR BD KARIA for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
Date : 23/03/2006
ORAL JUDGMENT

1. Heard Mr.Rajesh K. Shah, learned advocate for the petitioner-plaintiff, and Mr.B.D.Karia, learned advocate for the respondents-defendants. RULE. The petition is taken up for final hearing and disposal today with consent of the learned advocates.

2. In Special Summary Suit No.162 of 2002 filed by the plaintiff vide application Exh.75 dated 17th September, 2005 the plaintiff filed affidavit as required by Order XVIII Rule 4(1) of Code of Civil Procedure and stated in the said affidavit that Mark Nos.3/1 to 3/8 were required to be exhibited. It appears that initially the said documents came to be exhibited as Exh.76/1 to 76/6. The defendants, therefore, moved application Exh.77 dated 3rd October, 2005 praying that as the said documents had not been proved in accordance with the provisions of the Indian Evidence Act, 1972 they should not be exhibited. This prayer was made in the alternative to the principal prayer that the said documents are not admissible as evidence. A further alternative prayer was made that right of the defendants to cross-examine the plaintiff may be reserved and further that the documents are exhibited by reserving the liberty without prejudice to all legal rights of the defendants.

3. The trial Court vide impugned order dated 3rd October, 2005 accepted application Exh.77 and while passing the order in the operative portion recorded “Application is partly allowed. Documents Exh.76/1 to 70/6 be not exhibited in evidence. No costs.” . The grievance of the plaintiff is that by aforesaid

order the right of the plaintiff is shut out for ever.

4. As can be seen from the application moved by the defendants raising objection to the documents being exhibited, the objection was limited to the effect that the documents were not proved and hence, could not be exhibited without following the prescribed procedure in law. The defendants never stated that the documents should not be exhibited at all. Possibly even the trial Court did not mean to pass such an order but the language employed in the aforesaid order gives such an impression. In these circumstances, it is hereby clarified that the impugned order made by the trial Court stands modified to the extent that the plaintiff shall be required to prove the documents as evidence in accordance with the provisions of the Evidence Act and thereafter the Court shall exhibit the documents in accordance with law.

5. The petition is, accordingly, allowed to the aforesaid extent. Rule is made absolute. There shall be no order as to costs. Interim relief stands vacated in the circumstances. Direct service is permitted.

[D.A.MEHTA, J]

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Bhavesh*